

## JONES DAY

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March 28, 2023

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### VIA ELECTRONIC CASE FILING

Hon. Sarah L. Cave  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 1670  
New York, New York 10007-1312

Re: *loanDepot.com, LLC v. CrossCountry Mortgage, LLC, et al.*,  
No. 1:22-cv-05971-LGS (S.D.N.Y.)

Dear Judge Cave:

Pursuant to the Court's Rule I.F.2, and the Southern District of New York's ECF Rules & Instructions Section 6, Defendant CrossCountry Mortgage, LLC ("CrossCountry") respectfully moves this Court for leave to file redacted portions of Exhibit A that is attached to the contemporaneously filed Letter Regarding Discovery Disputes ("Disputes Letter") under seal.

As an initial matter, all judicial documents have a fundamental presumptive right of public access. *Olson v. Major League Baseball*, 29 F. 4th 59, at 87 (2d Cir. 2022) (citation omitted). In order for a document to meet the threshold question of whether it is a judicial document, it "must be relevant to the performance of the judicial function and useful in the judicial process." *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995). Once it finds that any record document is a judicial document, the court "must next determine the particular weight of that presumption of access for the record at issue." *Olson*, 29 F. 4th at 87 (citation omitted). Once weight of presumption has been assessed, "the court is required to 'balance competing considerations against it,'" which include "the privacy interests of those resisting disclosure." *Id.*, at 88 (citations omitted); *Rowe v. Google LLC*, No. 19 Civ. 8655 (LGS), 2020 WL 4467628, at \*2 (S.D.N.Y. Sept. 26, 2022) (Schofield, J.) (citations omitted).

Exhibit A has been filed in support of the Disputes Letter, and therefore is a judicial document. However, given the presence of personal information of non-party borrowers, the remaining factors weigh in favor of granting this motion to seal. Exhibit A to the Disputes Letter contains the first and/or last names of non-party borrowers or prospective borrowers used as proposed search terms during the course of discovery in this matter. The "privacy interests" of "nonparty individuals" who are unnecessary to adjudicate the Disputes Letter "counsel in favor of continued redaction" of such information under seal. *Falberg on behalf of Goldman Sachs 401(k) Plan v. Goldman Sachs Grp., Inc.*, No. 1:19-cv-09910-ER, 2022 WL 601967, at \*2 (S.D.N.Y. Mar. 1, 2022) (permitting, based on "privacy interests," filing under seal materials that "contain information identifying employees and nonparties, such as names, telephone numbers, and email addresses"); *accord Owen v. Elastos Foundation*, No. 19-CV-5462 (GHW) (BCM), 2023 WL 194607, at \*16 (S.D.N.Y. Jan. 11, 2023) (same); *Cohen v. Gerson Lehrman Grp., Inc.*, No. 09 Civ. 4352(PKC), 2011 WL 4336679 (S.D.N.Y. Sept. 15, 2011) (granting permission to seal "individual contact information" of nonparties, "such as e-mail addresses, home addresses and phone numbers," because "[s]uch information is not at issue in this dispute and the individuals have a countervailing privacy interest in their non-disclosure").

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Accordingly, CrossCountry respectfully asks this Court to file the redacted portions of Exhibit A to the Disputes Letter under seal.

Respectfully submitted,

*s/ Michael A. Platt*

Michael A. Platt

cc: All counsel of record (by ECF)

#### APPENDIX OF PARTIES AND COUNSEL

#### WHO MAY HAVE ACCESS TO DOCUMENTS FILED UNDER SEAL

- Counsel of Record for loanDepot.com, LLC may have access to the sealed documents.
- Counsel of Record for Individual Defendants may have access to the sealed documents.

The letter-motion of Defendant CrossCountry Mortgage, LLC requesting to file under seal the the redacted portions of Exhibit A of its pre-conference submissions (ECF No. 312) is GRANTED.

The Clerk of Court is respectfully directed to (i) seal ECF No. 313-1, which shall remain visible only to the selected parties; (ii) unseal the documents at ECF Nos. 313 and 313-2 – 313-3, which shall be made viewable to the public; and (iii) close ECF No. 312.

SO ORDERED 03/28/23

  
SARAH L. CAVE  
United States Magistrate Judge